Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
	)	
Reform of Access Charges Imposed by	)	
Competitive Local Exchange Carriers	)	

OPPOSITION TO PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

Iowa Telecommunications Services, Inc. ("Iowa Telecom"), by its attorney and pursuant to section 1.429(f) of the Commission's rules,[1] respectfully submits its Opposition to the Petition for Reconsideration and/or Clarification filed by the Rural Independent Competitive Alliance (the "RICA Petition") in the above-captioned proceeding.[2] RICA seeks reconsideration of the Commission's Seventh Report and Order.[3] The RICA Petition should be denied unless Iowa Telecom is allowed to charge the same NECA rates as the rural telephone company incumbent local exchange carriers ("ILECs") overbuilding Iowa Telecom's service area.

[1] 47 C.F.R. § 1.429(f).

[2] Public Notice of the RICA Petition was published in the Federal Register on July 6, 2001. 66 Fed. Reg. 35628. See also FCC Public Notice, Report No. 2490, Mimeo No. 25506, June 29, 2001.

[3] Access Charge Reform, Seventh Report and Order, CC Docket No. 96-262, FCC 01-146 (released April 27, 2001) ("Seventh Report and Order").

I. Background.

Iowa Telecom commenced operations on July 1, 2000 following the purchase of the Iowa local exchange properties operated by GTE Midwest, Inc. These properties are scattered through various parts of rural Iowa. As discussed in more detail below, Iowa Telecom serves not a single significant urban area.

Iowa Telecom is the nation's smallest LEC subject to price cap regulation. It elected to become a price cap carrier based on an analysis of the Commission's rules prior to changes wrought by the CALLS Order.[4] The CALLS plan was initially proposed to the Commission as a voluntary plan. However, at the eleventh hour, it was made virtually mandatory upon all price cap carriers, even rural LECs like Iowa Telecom, that were not a party to the CALLS coalition. The negotiations by the large price cap carriers and the major long distance carriers that made up the CALLS coalition resulted in the Commission setting an Average Traffic Sensitive ("ATS") rate target of only $.0095 per minute for Iowa Telecom.[5]

Distortions in the current regulatory environment, not market forces, have greatly assisted neighboring ILECs that are overbuilding Iowa Telecom's service territory. In just eleven months, Iowa Telecom has lost a substantial portion of its customer base in 22 of its exchanges to 19 competing LEC overbuilders. The majority of Iowa Telecom's competitors are affiliated with rural ILECs that benefit from universal service support, higher interstate access charges and far less regulatory burdens. Unlike its competitors,

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4 Access Charge Reform, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("CALLS Order").

5 The ATS rate cap is codified at 47 C. F.R. §§ 61.3(qq) and 61.42(e)(1). The $.0095 target rate is the rate applicable to carriers with a teledensity of 19 access lines per square mile or

Iowa Telecom receives no high cost loop or local switching support from the Universal Service Fund.

Current price regulation leaves a substantial disparity between the rates that Iowa Telecom is permitted to charge and the rates of neighboring LECs that are competing with Iowa Telecom. When operating inside Iowa Telecom's territory, the competing LEC is able to charge lower end user rates than Iowa Telecom but make up for the difference by charging higher access rates (the NECA rates) in their ILEC service areas than the $0.0095 rate that Iowa Telecom is permitted to charge under CALLS. The competing LEC will typically extend plant from its existing ILEC facilities and establish a remote in Iowa Telecom's service area running off the competitor's main switch located in its nearby ILEC territory. For example, the facilities of Lost Nation-Elwood Telephone Company ("Lost Nation") in Iowa Telecom's Oxford Junction exchange are part of Lost Nation's ILEC host system and simply an extension of the Lost Nation ILEC network.[6]

The competing LECs have one additional regulatory advantage that tilts the playing field and is particularly relevant to the Seventh Report and Order. Under the Seventh Report and Order, the competing LECs can now charge a benchmark rate (currently 2.5 cents) on a tariffed basis for access services inside Iowa Telecom's

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less. The specific services that the ATS rate covers (generally local switching and transport) are set forth at 47 C.F.R. § 61.3(e).

6 Iowa Telecom has asked the Commission to reclassify Lost Nation as the ILEC in Oxford Junction pursuant to Section 251(h)(2) of the Act, 47 U.S.C. § 251(h)(2). See Public Notice, CC Docket No. 01-139, DA 01-1517 (released June 25, 2001). By winning a market share of 94% in Oxford Junction, Lost Nation has replaced Iowa Telecom as the dominant LEC in Oxford Junction.

territory.[7] Thus they can employ an arbitrage strategy using the benchmark rate (charging lower end user rates than Iowa Telecom while making up for it by charging a far higher access rate than Iowa Telecom is permitted to charge) during a three-year transitional period as to their overbuilding operations inside Iowa Telecom's territory.[8] Because end users select a local exchange carrier based on end user rates and are indifferent to the access rates the local exchange carrier assesses on long distance carriers, this regulatory disparity allows competing LECs to effectively price their overall package of services in a way that Iowa Telecom is prohibited from matching.

The RICA Petition seeks to exacerbate this artificial regulatory advantage by allowing RICA members to permanently tariff the full NECA access rates for their overbuilding operations in Iowa Telecom's territory – while still restricting Iowa Telecom to the 0.95 cent maximum rate set in the CALLS Order.[9] The Seventh Report and Order allows rural LECs to assess the traffic-sensitive NECA access rates only when overbuilding the service area of a non-rural ILEC, such as Qwest, that also has significant urban operations.[10] Because Iowa Telecom is a rural ILEC with no urban operations to subsidize its rural service, as demonstrated below, competing LECs like the RICA members currently can bill under their tariff no more than 2.5 cents per minute under the Seventh Report and Order.[11] This rate of 2.5 cents is still so much higher than the \$.0095

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7 The competing LECs can also charge higher rates on a non-tariffed basis, without the protection of the Filed Rate Doctrine. Seventh Report and Order at ¶3.

8 Under current law, the RICA Members will indefinitely retain the ability to employ this arbitrage as to service provided in home ILEC territories.

9 RICA Petition, pp. iii, 7.

10 Seventh Report and Order at ¶ 79.

11 Moreover, competing LECs are not required to phase their access rates down to Iowa Telecom's rates until after three full years. 47 C.F.R. § 61.26(c).

that the CALLS Order permits Iowa Telecom to charge, that it alone gives an enormous yet unwarranted regulatory advantage to Iowa Telecom's competitors. Yet, not satisfied with being allowed under the Seventh Report and Order to tariff rates of 2.5 cents per minute while their competitor Iowa Telecom is not even allowed to charge 1 cent a minute, the RICA members seek reconsideration (specifically expansion of the CLEC rural exemption) so that they may indefinitely tariff and charge higher NECA rates that can easily reach 5 cents a minute or more.

II. The FCC Correctly Decided that Regulation Should Not Force A Rate Disparity Between What Iowa Telecom And Its Competitors Charge For Exchange Access.

The FCC correctly decided to not permit the rural competitive local exchange carrier ("CLEC") rate benchmark to be used to create a greater rate disparity in what is charged by a rural price cap ILEC such as Iowa Telecom and its competitors. The Commission recognized that the night-and-day disparity between NECA rates and CALLS rates can only be justified when a CLEC is competing with a price cap ILEC that "has broad-based operations that include concentrated, urban areas that allow it to subsidize its rural operations and therefore charge an artificially low rate for access to its rural customers." [12] As Iowa Telecom's service area is entirely rural, it has no ability to subsidize artificially low access rates to any part of its service territory.

That Iowa Telecom's entire service area is entirely rural cannot seriously be disputed. Iowa Telecom serves only two towns with populations that exceed 10,000: Newton (15,371) and Fairfield (10,332), based on the U.S. Bureau of the Census' July 1, 1998 population estimates. While the average rural area has a teledensity (lines per

[12] Seventh Report and Order at ¶ 79.

square mile) of 19, Iowa Telecom's service territory has a teledensity of only 14. Iowa Telecom qualifies as a rural telephone company as defined by Sections 3(37)(A), (C) and (D) of the Communications Act of 1934, as amended (the "Act"), both because its number of lines are below the thresholds stated in that section and because 0% of its lines are in communities of 50,000 or more.[13]

Given facts such as these, it was entirely reasonable for the Commission to distinguish between (1) non-rural price cap carriers that serve concentrated low-cost urban areas and can use revenue from those areas to subsidize operations in the rural portions of their service area, and (2) rural price cap carriers such as Iowa Telecom that serve no concentrated urban areas and lack the ability to subsidize any portion of their entirely rural service area with urban revenues. Only as to the former is there a public policy reason (the urban-to-rural subsidy) for giving competing LECs active in rural areas an offsetting artificial regulatory advantage.

III. The RICA Members and Iowa Telecom Face Similar Costs in Serving Iowa Telecom's Rural Service Area.

The RICA Petition implies that Iowa Telecom's characteristics more closely resemble the BOCs than the ILECs that are overbuilding Iowa Telecom's service area.[14] It also implies that the competing ILECs have higher costs because Iowa Telecom is allegedly not investing in upgrading its infrastructure. [15] These conclusions are false and not supported by the facts or other evidence.

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13 47 U.S.C. §§ 153(37)(A), (C) and (D).

14 RICA Petition, p. iii.

15 RICA Petition, p. 8.

Iowa Telecom is far more similar to the rural rate-of-return carriers than the large price cap carriers. A primary distinguishing characteristic that sets Iowa Telecom apart from the large price cap ILECs is that Iowa Telecom qualifies as a "rural telephone company" under the Act. Furthermore, Iowa Telecom is effectively a collection of small rural telephone exchanges, not much different from the exchanges of the RICA members. Iowa Telecom's local subscribers are spread over 296 exchanges, 152 of which have 500 access lines or less. Only five of Iowa Telecom's exchanges have more than 5,000 access lines, and no exchange has more than 12,000 access lines. Because of the fragmented nature of Iowa Telecom's service area, and the proximity of the numerous independent ILEC exchanges, competitive entry is omnipresent.

Significantly, at least twenty percent of Iowa Telecom's access lines are located more than 3 miles from the nearest central office. Long loop lengths and such low density necessarily translates into higher costs of operation than experienced by the typical price cap carrier. The Seventh Report and Order already permits competing LECs to bill interexchange carriers higher carrier common line rates than Iowa Telecom through the application of the 2.5 cents rate benchmark. Because Iowa Telecom's loop costs more closely resemble the loop costs of the competing LECs, the Commission should not force an even greater rate disparity in the carrier common line rates charged by Iowa Telecom and its competitors.

RICA is also wrong in implying that Iowa Telecom is not incurring substantial costs in modernizing its rural infrastructure. Iowa Telecom is aggressively working to upgrade its rural network. The costs that Iowa Telecom is incurring to upgrade its plant are equal to, if not greater, than the costs that competing LECs are incurring to overbuild

Iowa Telecom's service area. No public policy goal is served by granting the rate increase requested by RICA for the competing LECs while depriving Iowa Telecom of the same access to additional revenue to upgrade its plant.

However, the public interest would be served by permitting Iowa Telecom to bill the same NECA rates that competing LECs bill in their nearby host ILEC exchanges. Doing so will foster a more equitable, pro-competitive environment and accelerate the deployment of advanced infrastructure in rural Iowa.

A primary purpose of the Seventh Report and Order was to establish "a pro-competitive, deregulatory national policy framework for the United States' telecommunications industry."[16] The Commission sought to achieve this goal consistent with its obligation under sections 7 and 254(b)(3) of the Act,[17] "to encourage the deployment to rural areas of the infrastructure necessary to support advanced telecommunications services."[18]

Longer loop lengths and a lower concentration of potential customers motivated the Commission to allow higher access charges in rural areas.[19] The Commission allowed certain competing LECs to charge the NECA rates because they lacked lower–cost urban operations that could be used to subsidize rural telephone service.[20] The

[16] Seventh Report and Order at ¶ 1.

[17] 47 U.S.C. §§ 157, 254(b)(3).

[18] Seventh Report and Order at ¶ 65.

[19] Id. at ¶ 75.

[20] Id. at ¶ 66.

Commission recognized that billing the NECA rates would eliminate the implicit subsidy enjoyed by interexchange carriers in obtaining access to very rural customers.[21]

The same factors support allowing Iowa Telecom to bill the NECA rates. The longer loop lengths and lower concentration of potential customers in Iowa Telecom's service area warrant higher access charges than that mandated by the CALLS Order. Iowa Telecom has absolutely no urban operations that it could use to subsidize lower rural rates. The only service that Iowa Telecom provides is rural. RICA admits that "it is generally true that these rural price cap ILECs do not have the same percentage of low cost urban lines with which to average their costs."[22]

Permitting Iowa Telecom to bill the NECA rates would also accelerate the deployment in rural areas of facilities capable of supporting advanced calling features and advanced telecommunications services. This would help achieve the important goals Congress set forth in sections 7 and 254(b)(3) of the Act. While the competing LECs can bill the NECA rates for access to their ILEC exchanges while overbuilding of Iowa Telecom's service area, Iowa Telecom is limited in the extent it can upgrade its rural infrastructure by the ATS rate target of $.0095 imposed by the CALLS Order.

Iowa Telecom is already investing in upgrading its infrastructure at a rate comparable to the average of the mid-sized ILEC industry. It cannot reasonably be expected to do more without access to additional revenue. The limited rate relief requested by Iowa Telecom, the ability to charge the same NECA rates billed by its ILEC competitors, is essential to providing rural consumers with the benefits of modernized and upgraded service.

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21 Id. at ¶ 67.

IV. RICA Petition Should Be Denied Unless Parity Is Established By Allowing Iowa Telecom To Match Competing LEC Rates.

The RICA Petition should be denied to the extent it seeks to widen the unwarranted and inequitable rate disparity between what Iowa Telecom and the competing LECs can charge for exchange access. Federal regulation already puts Iowa Telecom at a significant competitive disadvantage. Iowa Telecom's costs resemble those of the competing LECs. Yet, the competing LECs can finance their overbuilding of Iowa Telecom's service area with far higher access charges than the $.0095 per minute Iowa Telecom is permitted to bill. In their ILEC exchanges, the competing LECs bill the NECA rates and in Iowa Telecom's service area they can bill 2.5 cents per minute. There is no sound public policy reason for such unequal treatment of competitors that share such similar rural characteristics.

The Commission should permit Iowa Telecom to bill the same NECA rates that competing LECs bill. Applying equal price regulation or benchmark rates among competitors will establish a far more vibrant competitive environment and avoid the distortion of market forces caused by the current regulated price disparity.

Conclusion

For the forgoing reasons, the Commission should deny the RICA Petition for Reconsideration and/or Clarification unless the Commission takes action to establish a level playing field that permits competing LECs and rural price cap ILECs such as Iowa Telecom to charge the same rate for the same access services.

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[22] RICA Petition, p. 8.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Opposition to Petition for Reconsideration and/or Clarification* has been sent via hand-delivery this 23rd day of July, 2001 to the following:

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